

IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON : 11.06.2018
PRONOUNCED ON : 20.06.2018

CORAM

THE HONOURABLE MR. JUSTICE T.RAVINDRAN

S.A.No.380 of 2004

K.Kuppuraj ... Appellant/defendant
Vs.

1.N.Krishnan (Died)
2.K.Surendra Babu
3.Suryakala
4.Jayanthi
5.K.Selvam

(RR2 to R5 brought on record as
LRs of the deceased sole respondent
vide order of Court dated 13.02.2012
made in CMP.No.1097/2008 and
CMP.No.8/2012) in SA/380/04 ... Respondents/Plaintiff

Prayer: Second Appeal filed under Section 100 of Civil Procedure Code, against the judgment and decree dated 15.10.2003 made in A.S.No.8 of 2000 on the file of the Additional District Court - Fast Track Court No.I, Chengalpet, confirming the judgment and decree dated 31.08.1999 made in O.S.No.507 of 1990 on the file of the District Munsif Court, Chengalpet.

For Appellant : Mr.M.S.Subramanian

For Respondents : Mr.J.Srinivasa Mohan

JUDGMENT

Challenge in this second appeal is made to the judgment and decree dated 15.10.2003, passed in A.S.No.8 of 2000, on the file of the Additional District Judge, Fast Track Court No.1, Chengalpet, partly confirming the judgment and decree dated 31.08.1999, passed in O.S.No.507 of 1990, on the file of the District Munsif Court, Chengalpet and resultantly, granting the decree of declaration and possession in respect of the suit property in favour of the plaintiff.

2. Parties are referred to as per their rankings in the trial court.

3. Suit for declaration, permanent injunction or in the alternative recovery of possession.

4. The case of the plaintiff, in brief, is that the suit property was purchased by him, by way of a registered sale deed dated 25.04.1990 from Muthanandam and thereby, the plaintiff has been in possession and enjoyment of the suit property and the property comprised in Punja Survey No.32/1, measuring 1.28 acres originally belonged to Raju Mudaliar and after his death, his two sons got divided by way of a registered partition deed dated 19.12.1965 and in the said partition, the A schedule properties detailed therein were allotted to Kuppuswamy Mudaliar and the B schedule properties detailed therein were allotted to Ayyavu Mudaliar and thereafter, Kuppuswamy Mudaliar effected the division with his two sons and daughter, by way of a registered partition deed dated 22.11.1971, in respect of the properties belonging to him and his family and in the partition deed dated 19.12.1965, the northern half of the 1.28 acres in Survey No.32/1, namely, the suit property, 0.64 cents was allotted to the share of Kuppuswamy Mudaliar and in the partition deed effected on 22.11.1971, the suit property was allotted to Muthanandam Mudaliar, the eldest son of Kuppuswamy Mudaliar and the suit property has been in the possession and enjoyment of the plaintiff and his predecessor in title as abovestated and by mistake, Ayyavu Mudaliar had sold the northern 0.64 cents in Survey No.32/1 allotted to Muthanandam Mudaliar in the year 1978 and the defendant suddenly trespassed into the suit property in 1984 and on account of the same, the plaintiff's vendor Muthanandam Mudaliar issued a lawyer's notice on 14.06.1987 directing him to deliver the suit property. Thereafter, a compromise was effected between Munthananda Mudaliar and the defendant in the presence of A.Natarajan Mudaliar and the defendant assured that he will cut the casurina trees raised in the suit property and deliver the possession and accordingly, the defendant cut the casurina trees and delivered the possession. But the defendant has been giving out that he would not offer anything to Muthanandam Mudaliar and Muthanandam Mudaliar unable to cultivate the lands, sold the suit property to the plaintiff and put him in possession of the same and accordingly, the plaintiff has been in possession and enjoyment of the suit property and inasmuch as the defendant without any authority disputed the claim of title of the plaintiff to the suit property and also challenged his possession and enjoyment, according to the plaintiff, he has been necessitated to lay the suit for appropriate reliefs.

5. The case of the defendant, in brief, is that the suit

laid by the plaintiff is not maintainable either in law or on facts. The defendant had prescribed title over the suit property by adverse possession and the suit claim is barred by limitation. The plaintiff's vendor has no valid title to the suit property and therefore, the plaintiff cannot lay any claim in respect of the suit property, by way of a sale deed dated 25.04.1990. It is false to state that the plaintiff was put in possession of the suit property by his vendor under the abovesaid sale deed. No effective partition took place between Ayyavu Mudaliar and Kuppusamy Mudaliar under the partition deed dated 19.12.1965 and it was not acted upon and the sharers had not taken possession of their respective shares as allotted to them under the abovesaid partition and the defendant has been put in possession of the suit property by way of a sale deed dated 17.04.1978 executed by Ayyavu Mudaliar and even prior to the same, Ayyavu Mudaliar orally sold the suit property to the defendant as early as 1973 itself and accordingly, it is only the defendant, who has been in continuous possession and enjoyment of the suit property and in the partition effected during 1971 between Kuppuswamy Mudaliar and his sons, there is no specific mention about the allotment of the suit property in favour of Muthanandam Mudaliar son of Kuppuswamy Mudaliar. In fact, Muthanandam Mudaliar left the suit village as early as 1960 to eke out his livelihood and the suit property has been only in the possession and enjoyment of the defendant's vendor Ayyavu Mudaliar and the same could be evidenced from the Kists paid by Ayyavu Mudaliar and the defendant and thereby, the defendant has acquired title to the suit property by prescription and the defendant has already filed a suit in O.S.No.237 of 1986 against one Subramaniam, S/o Ayyavu Mudaliar to safeguard his possession in respect of the suit property and the said suit ended in his favour and the plaintiff has no cause of action to institute the suit and hence, the suit is liable to be dismissed.

6. In support of the plaintiff's case, PWs 1 and 2 were examined. Exs.A1 to A12 were marked. On the side of the defendant, DWs 1 to 3 were examined. Exs.B1 to B8 were marked.

7. On a consideration of the oral and documentary evidence adduced by the respective parties and the submissions made, the trial Court was pleased to decree the suit and accordingly, granted the reliefs of declaration and permanent injunction in favour of the plaintiff. In the first appeal preferred by the defendant, it is found that additional documents have come to be marked in support of the case of the defendant as Exs.B9 to B13. The first appellate Court, on an appreciation of the materials placed on record and the submissions made, was pleased to confirm the decree of declaration granted by the trial Court in favour of the plaintiff and setting aside the judgment and

decree of the trial Court as regards the grant of relief of permanent injunction, resultantly, granted the relief of possession in favour of the plaintiff in respect of the suit property and accordingly, disposed of the first appeal in favour of the plaintiff. Impugning the same, the present second appeal has been preferred.

8. At the time of admission of the second appeal, the following substantial questions of law were formulated for consideration.

(i) Whether the possession of defendant's vendor cannot be tacked on to the defendant to find out adverse possession?

(ii) When the defendant has purchased the property under a registered sale deed on 17.04.1978, is not the suit filed beyond 12 years barred by limitation and adverse possession?

9. It is not in dispute that the extent of 1.28 acres in S.No.32/1 originally belonged to Raju Mudaliar. It is found that Raju Mudaliar had two sons, namely, Kuppuswamy Mudaliar and Ayyavu Mudaliar and from the evidence and materials placed on record, it is found that Kuppuswamy Mudaliar and Ayyavu Mudaliar had effected partition in respect of the properties belonging to their family, by way of a deed of partition dated 19.12.1965, which document has come to be marked as Ex.A2. On a perusal of the said partition deed, it is found that as rightly put forth by the plaintiff, the suit property had been allotted to Kuppuswamy Mudaliar and it is thus found that as determined by the Courts below, under Ex.A2 partition deed, Kuppuswamy Mudaliar had been allotted the suit property. It is the case of the plaintiff that Kuppuswamy Mudaliar and his sons and daughter effected partition of their properties by way of a partition deed dated 22.11.71, which has been marked as Ex.A3 and a perusal of the same would go to show that the suit property had been allotted to the eldest son of Kuppuswamy Mudaliar, namely, Muthanandam Mudaliar and accordingly, it is found that Muthanandam Mudaliar has derived title to the suit property under Ex.A3 partition deed. As rightly found and determined by the Courts below, a perusal of Exs.A2 and A3 in toto would go to show that the properties acquired by Kuppuswamy Mudaliar under Ex.A2 partition deed had been allotted to Muthanandam Mudaliar by way of Ex.A3 partition deed. The abovesaid determination of the Courts below, in my considered opinion, do not warrant any interference. Though by way of the additional document marked as Ex.A11 stated to be a release deed executed by Kuppuswamy Mudaliar in favour of Ayyavu Mudaliar in respect of the properties belonging to Kuppuswamy Mudaliar, the defendant has posed a challenge to the plaintiff's case, as rightly found by

the Courts below, when Ex.A11 release deed does not pertain to the suit property as such and further, when it is seen that Ex.A11 had not been given effect to and despite the same, Kuppuswamy Mudaliar and Ayyavu Mudaliar had ventured to divide the properties belonging to them by way of Ex.A2 deed, it is found that as held by the Courts below, Ex.A11 release deed had not been given effect to and accordingly, it is seen that by way of Ex.A2 partition deed, the suit property had been allotted only to the share of Kuppuswamy Mudaliar and as above seen, by way of Ex.A3 partition deed, the suit property had come to be allotted to Muthanandam Mudaliar, the eldest son of Kuppuswamy Mudaliar. The plaintiff claims to have purchased the suit property from Muthanandam Mudaliar under Ex.A1 sale deed. Now, according to the plaintiff, since then, he has been in possession and enjoyment of the suit property.

10. The defendant claims title to the suit property by way of a sale deed dated 17.04.1978, alleged to have been executed by Ayyavu Mudaliar. However, when the defendant has not placed any acceptable and reliable material to hold that Ayyavu Mudaliar, as such, had been allotted the suit property under Ex.A2 partition deed or derived a valid title to the same by other means, it is seen that the claim of the defendant to have acquired title to the suit property under the said sale deed marked as Ex.B3 cannot be countenanced in any manner. Knowing fully well that the defendant could not put forth a regular claim of title to the suit property under Ex.B3, it is found that the defendant has also taken the plea of adverse possession for laying the claim to the suit property. By taking the plea of adverse possession, it is found that the defendant has impliedly admitted the plaintiff's title to the suit property as well as the title of the plaintiff's predecessor in interest.

11. On the basis of the materials placed on record, it is found that the defendant had trespassed into the suit property during 1984 without any authority and accordingly, it is seen that claiming the possession of the suit property from him, the plaintiff's vendor Muthanandam Mudaliar had issued a notice dated 14.06.1987, marked as Ex.A4 calling upon him to hand over the possession of the suit property. Now, it is the case of the plaintiff that the panchayat was convened and the defendant had agreed to handover the possession of the suit property to Muthanandam Mudaliar after cutting the casurina trees raised therein and however, it is found that the possession of the suit property had not been handed over to Muthanandam Mudaliar by the defendant after the issuance of Ex.A4 notice. Be that as it may, when it is found that the defendant has not established that he has a valid claim of title to the suit property and when it is also found that from the materials placed on record, the defendant's possession of the suit property could only be

recognized from 1984 and when there is no material placed on record to hold that the defendant or his alleged vendor Ayyavu Mudaliar had been in possession and enjoyment of the suit property openly, continuously and by asserting title on themselves and enjoying the suit property denying the title of the plaintiff or his predecessor in interest to their knowledge and when continuous and long possession and enjoyment of the suit property by the defendant and his predecessor in interest satisfying the abovesaid requirements for more than the statutory period having not been established by the defendant by placing acceptable and reliable materials, further, when it is found that the defendant has not taken a valid plea of adverse possession, particularly, when he has not pleaded as to when from his possession had become adverse and he had been exercising animus attitude in the enjoyment of the suit property against the plaintiff and his predecessor in interest and also enjoying the suit property as abovestated beyond the statutory period openly and to the plaintiff's knowledge, as rightly determined by the first appellate Court and as argued by the counsel appearing for the plaintiff and considering the principles of law enunciated in the decisions reported in AIR 2009 SC 103 (Hemaji Waghaji Jat Vs. Bhikhabhai Khengarbhai Harijan and Ors), CDJ 2011 SCC 1060 (State of Haryana Vs. Mukesh Kumar & Others), CDJ 2009 MHC 3512 (S.Ganesan Vs. Bharathirajan) and CDJ 2011 MHC 3820 (K.Gopalan (died) & Others Vs. Muthulakshmi), when it is found that the essential ingredients constituting the plea and establishment of adverse possession having not been satisfied by the defendant as adumbrated thereunder, it is found that the defendant cannot be allowed to contend that he has prescribed title to the suit property by way of adverse possession. Equally, the defendant cannot be allowed to contend without any basis that the Courts below had failed to take into account or tack his alleged vendor's possession for determining the plea of adverse possession, when there is no acceptable and reliable materials to show that the defendant's alleged vendor's had any valid claim of title to the suit property as such and been in the possession and enjoyment of the suit property as projected and when on the materials placed on record, it is found that at the most, the defendant's possession and enjoyment of the suit property can only be considered for a period of seven years i.e., from 1984 onwards by way of trespass and when within the time allowed by law the plaintiff's vendors had challenged the same by the issuance of Ex.A4 notice and that apart, when it is found that the plaintiff has instituted the suit in the year 1990 by asserting his title to the suit property and also sought for the recovery of possession of the same from the defendant, the first appellate Court is correct in negating the plea of adverse possession projected by the defendant. In view of the above reasons, I do not find any reasons to disturb the determination of the Courts below

upholding the claim of the plaintiff to the suit property. Similarly, I do not find any valid reason to dislodge the determination of the first appellate Court in negating the plea of adverse possession projected by the defendant.

12. For the reasons aforesaid, the claim of the defendant that he has prescribed title to the suit property by adverse possession and the suit laid by the plaintiff is barred by limitation are rightly found to be negated by the Courts below and the substantial questions of law formulated in the second appeal are accordingly answered against the defendant and in favour of the plaintiff.

13. In conclusion, the second appeal fails and is accordingly dismissed with costs. Consequently, connected miscellaneous petition, if any, is closed.

Sd/-
Assistant Registrar(CS VII)

//True copy//

Sub Assistant Registrar

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To

1. The Additional District Court,
Fast Track Court No.1,
Chengalpet.
2. The District Munsif Court,
Chengalpet.

Copy TO

1. The Section Officer,
V.R.Section,
High Court, Madras.

+1cc to Mr.J.Srinivasa Mohan, Advocate SR.No.39429
+1cc to Mr.M.S.Subramanian, Advocate SR.No.38815

S.A.No.380 of 2004

SSI (CO)
GN(19/07/2018)